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State v. Martin Appellant's Brief Dckt. 43297

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CHRISTOPHER LEE MARTIN, Defendant-Appellant.	)	NO. 43297 VALLEY COUNTY NO. CR 2007-50 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

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STATEMENT OF THE CASE

Nature of the Case

Christopher Lee Martin appeals from the district court's Order Denying Rule 35 Motion. On appeal, Mr. Martin asserts the district court erred when it denied his Idaho Criminal Rule 35 (Rule 35) motion to correct the computation of credit for time served, because he is entitled to credit for all the time served.

Statement of the Facts and Course of Proceedings

On January 3, 2007, the State filed a Criminal Complaint alleging Mr. Martin had committed one count of burglary, felony, in violation of Idaho Code § 18-1401, one count of petit theft, misdemeanor, in violation of I.C. §§ 18-2403(1) and 18-2407(2), one count of malicious injury to property, felony, in violation of I.C. § 18-7001, one count of malicious injury to property, misdemeanor, in violation of I.C. § 18-7001, and one count of unlawful entry, misdemeanor, in violation of I.C. § 18-7034. (R., pp.7-10.)[1] The counts stemmed from an alleged incident at a property in Cascade. (*See* R., pp.8-10.) At the time the complaint was filed, Mr. Martin was incarcerated in the custody of the Idaho Department of Correction (IDOC) on another case.[2] (*See* R., pp.106, 114-15.)

On February 16, 2007, Mr. Martin was served with a detainer and warrant in this case while he was in prison. (R., pp.114-20.) About a month later, Mr. Martin filed, *pro se*, a "Motion and Demand of Speedy Trial," requesting a speedy trial under I.C. § 19-3504. (R., pp.13-14.) The district court did not act on that motion. (*See* R., p.106.)

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[1] All page cites to "R." refer to the 153-page PDF electronic version of the Clerk's Record on Appeal. Please note the electronic version of the record does not include pagination outside that provided by the PDF reader program.

[2] The record does not clearly state the identity of the other case, but the district court ultimately ordered that the sentence in this case run concurrently "with all other cases including Gem County Case No. CR06-2317." (*See* R., p.96.)

Some five months later, Mr. Martin filed, *pro se*, a letter requesting a public defender to represent him in this case. (R., p.17.) Mr. Martin filed additional *pro se* requests, but the district court did not act on any of his *pro se* filings. (*See* R., pp.18-31, 106.)

On or around August 16, 2009, Mr. Martin was paroled in the other case. (*See* R., p.106.) On August 18, 2009, in this case, Mr. Martin was released on his own recognizance. (*See* R., pp.33-35, 106; *see also* R., p.15 (Statement of Defendant's Rights in a Felony Case), p.16 (Order Appointing Public Defender and Order for Discovery).) Mr. Martin then waived his preliminary hearing, and the magistrate bound him over to the district court. (*See* R., p.36.) The State filed an Information charging him with felony burglary, misdemeanor petit theft, felony malicious injury to property, misdemeanor injury to property, and misdemeanor unlawful entry. (R., pp.37-40.)

Pursuant to a plea agreement, Mr. Martin pleaded guilty to felony burglary, and the State agreed to dismiss the other counts. (R., pp.41-43, 45-51, 106.) However, Mr. Martin did not appear at his scheduled sentencing hearing, because he had been arrested on a parole violation in the other case and was in IDOC custody. (*See* R., pp.52, 106.) The district court later indicated the parole violation was for attempting to associate with females. (*See* R., p.70.)

On December 23, 2009, Mr. Martin was served with another detainer and warrant in this case while in prison on the parole violation. (R., pp.121-24.) On October 4, 2012, Mr. Martin filed, *pro se*, a "Motion for Transport and [Schedule] Court Date," requesting that he be transferred from IDOC custody to Valley County to finish sentencing in this case. (R., pp.53-55.) Later that month, he wrote a letter to the district court clerk inquiring as to the progress on this case. (R., p.56.) It does not appear the district court acted on either the motion or the letter.

On January 4, 2013, in response to the State's Motion to Transport, the district court entered an Order to Transport Mr. Martin from IDOC custody to Valley County. (R., pp.57-60.) On February 28, 2013, the district court sentenced Mr. Martin to a unified term of six years, with one year fixed, and retained jurisdiction. (R., pp.69-71, 74-77.) The district court indicated the sentence was shorter than it could have been because the credit for time served to which Mr. Martin was entitled was unclear. (*See* R., pp.70-71.) The district court stated in the Judgment of Conviction and Sentence that "[f]or record purposes only, the defendant is entitled to credit for fifty-one (51)-days served as of the 28th day of February, 2013." (R., p.76.)

Mr. Martin subsequently filed, *pro se*, a "Relinquish of Rider" motion, requesting his "rider" be terminated and jurisdiction relinquished. (*See* R., pp.80-81.) The district court then relinquished jurisdiction and executed the sentence on June 27, 2013. (R., pp.84-86, 88-90.) The district court reserved jurisdiction to determine Mr. Martin's credit for time served. (R., p.89.) Almost a year later, the district court determined Mr. Martin "shall receive credit for one hundred seventy (170) days served as of June 27th, 2013." (R., pp.96-98.)

About two months after the district court's credit determination, Mr. Martin filed a Rule 35 Motion to Reduce and/or Correct Sentence. (R., pp.105-10.) Mr. Martin asserted he "is entitled to credit for time served from February 16, 2007, the date the original warrant was served on him, until August 18, 2009, the date he was released on that warrant." (R., p.107.) Mr. Martin also asserted he "is entitled to credit for time served from December 23, 2009, the date the second warrant was served on him, to June 27, 2013, the date of the final sentencing." (R., p.107.) He asserted he "is entitled to credit for a total of approximately 2,204 days." (R., p.107.)

Mr. Martin asserted he was "incarcerated on both warrants" in this case while in the custody of IDOC. (R., pp.107-08.) He also asserted that, because he was being detained on warrants while in IDOC custody, he was ineligible for community work release. (R., pp.107-08; *see* R., pp.125.) Mr. Martin further asserted not giving him the requested credit would "set[] a precedent and incentive for the State to decline to transport individuals at IDOC to answer charges in a timely manner." (R., p.108.) Conversely, granting the requested credit for time served would send "a clear message that encourages prompt resolution of criminal matters." (R., p.109.) Thus, Mr. Martin requested "that the Court correct his Judgment to reflect credit for 2,204 days served." (R., p.109.)

The district court then entered an Order Denying Rule 35 Motion.[3] (R., pp.126-31.) The district court stated the original grant of 51 days credit for time served was for "stints in custody from August 14 to 18 of 2009 and January 14 to February 28 of 2013." (R., p.126.) The district court also stated it had "acknowledged uncertainty about how to calculate Martin's accumulated credit for time served," and "appear[ed] to have resolved the uncertainty against Martin but told Martin the sentence handed down was much lighter as a result." (R., p.126.) According to the district court, the later grant of 170 days credit for time served "included 119 days more credit for time served than had been awarded when the rider sentence was pronounced on February 28, 2013. Not coincidentally, 119 days had passed from the day after the rider sentence was pronounced through the day jurisdiction was relinquished [June 27, 2013]." (R., p.127.)

[3] By this time, a new district judge was presiding over Mr. Martin's case. (*See* R., pp.126-27, 130.)

The district court determined "a defendant already serving time in one case when he is served with an arrest warrant in a second case isn't entitled to credit under I.C. § 18-309 for time served in the second case from the date the arrest warrant was served, as his incarceration simply was not a consequence of or attributable to the second case." (R., p.128 (citing *State v. Vasquez*, 142 Idaho 67, 68 (Ct. App. 2005); *State v. Horn*, 124 Idaho 849, 850-51 (Ct. App. 1993).) The district court noted Mr. Martin had not discussed *Vasquez* or *Horn*. (R., p.128.)

The district court then determined Mr. Martin's incarceration between February 16, 2007 and August 2009 "was not a consequence of or attributable to this case, so he is not entitled to credit in this case for that incarceration." (R., p.128.) The district court also determined Mr. Martin's incarceration from the point of his parole-violation arrest [before November 23, 2009] to the time of transport to Valley County in January 2013 was not a consequence of or attributable to this case . . . he was out on bond in this case when he was arrested on the parole violation." (R., p.129.) Thus, Mr. Martin was "not entitled to credit in this case for that incarceration either." (R., p.129.)

The district court determined Mr. Martin's assertion his parole eligibility was adversely affected by the pendency of this case did not affect its conclusion, because his evidence was insufficient to establish he would have been released on parole a second time, or when he would have been released. (R., p.129.) Even assuming this case adversely affected Mr. Martin's parole eligibility, the district court determined he was still incarcerated in the case or cases in which he had violated his parole conditions, not in this case. (R., p.129.)

Further, the district court rejected Mr. Martin's policy arguments. (R., p.129.) The district court stated it had to decide the Rule 35 motion based on I.C. § 18-309 as

written, rather than policy analysis. (R., p.129.) The district court also stated the district court had given Mr. Martin a lower sentence in this case as an express result of considering the time he spent incarcerated in the other case or cases. (R., pp.129-30.) Thus, the district court denied the Rule 35 motion. (R., p.130.)

Mr. Martin filed a Notice of Appeal timely from the district court's Order Denying Rule 35 Motion. (R., pp.132-36.)

ISSUE

Did the district court err when it denied Mr. Martin's Rule 35 motion to correct the computation of credit for time served, because he is entitled to credit for all the time served?

ARGUMENT

The District Court Erred When It Denied Mr. Martin's Rule 35 Motion To Correct The Computation Of Credit For Time Served, Because He Is Entitled To Credit For All The Time Served

A. Introduction

Mr. Martin asserts the district court erred when it denied his Rule 35 motion to correct the computation of credit for time served, because he is entitled to credit for all the time served. Idaho Code § 18-309 provides "the person against whom the judgment was entered shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309(1). Mr. Martin served prejudgment time from service of the first warrant in this case from February 16, 2007 to August 18, 2009, and from service of the second warrant from December 23, 2009 to June 27, 2013. (*See, e.g.*, R., p.107.) Combined, he served a total of 2,204 days. (*See* R., pp.107, 109.)

As the district court explained, it only gave Mr. Martin credit for the time he served between August 14 and August 18 of 2009, and between January 14 and June 27 of 2013, a total of 170 days. (*See* R., pp.126-27.) However, under the plain language of Section 18-309, Mr. Martin is entitled to credit for all the time served in this case. Thus, the district court erred when it denied his Rule 35 motion to correct the computation of credit for time served.

B. Standard Of Review

Whether a district court properly applied the law governing credit for time served to the facts is a question of law over which appellate courts exercise free review. *State v. Brashier*, 130 Idaho 112, 113 (Ct. App. 1997). Similarly, statutory interpretation

is a question of law over which appellate courts exercise free review. *State v. Dunlap*, 155 Idaho 345, 361 (2013).

C. Under The Plain Language Of I.C. § 18-309, Mr. Martin Is Entitled To Credit For All The Time Served

Mr. Martin asserts that, under the plain language of I.C. § 18-309, he is entitled to credit for the time served in this case.

The Idaho Supreme Court has held the interpretation of a statute "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011) (internal quotation marks omitted). The *Verska* Court further held "that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *Id.* (internal quotation marks omitted). "If the statute as written is socially or otherwise unsound, the power to correct it is legislative, not judicial." *Id.* (internal quotation marks omitted).

Under Idaho Criminal Rule 35, "[a] motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code Sections 18-309 or 19-2603, may be made at any time." I.C.R. 35(c). Idaho Code § 18-309 provides, in relevant part:

> In computing the term of imprisonment, the person against whom the judgment was entered shall receive credit in the judgment for any period of incarceration prior to entry of judgment, *if such incarceration was for the offense or an included offense for which the judgment was entered.* The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned

> thereto, the time during which he was at large must not be computed as part of such term.

I.C. § 18-309(1) (emphasis added).

The Idaho Court of Appeals has held that "[t]he statute's phrase 'if such incarceration was for the offense or an included offense for which the judgment was entered' means that the right to credit is conferred only if the prejudgment incarceration is a *consequence* of or *attributable* to the charge or conduct for which the sentence is imposed.'" *State v. Vasquez*, 142 Idaho 67, 68 (Ct. App. 2005) (citing *State v. Horn*, 124 Idaho 849, 850 (Ct. App. 1993); *State v. Hale*, 116 Idaho 763, 765 (Ct. App. 1989)) (emphasis in original). The Court of Appeals in *Vasquez* continued: "Thus, there must be a causal effect between the offense and the incarceration in order for the incarceration to be 'for' the offense, as the term is used in I.C. § 18-309." *Id.*

Under this "causation test," the Court of Appeals has held defendants who are served with an arrest warrant from one county, while already serving time in a second county on unrelated charges, are not entitled to credit on the first county's sentence for prejudgment time served in the second county. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51. The Court of Appeals has reasoned that because such defendants were already serving time in the second county when they were served with the arrest warrant from the first county, the first county charges had no effect on the defendants' liberty because they were already subject to confinement for charges arising in the second county. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51.

The Idaho Supreme Court's recent decision in *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015), casts doubt on the Court of Appeals' causation test. In *Owens*, the Court held "Idaho Code section 18-309's language unambiguously requires courts to

credit a defendant any prejudgment incarceration served on each count." *Owens*, 158 Idaho at ___, 343 P.3d at 35. Thus, the Court held a defendant who was incarcerated for multiple counts before pleading guilty and then given consecutive sentences for eight different offenses of issuing a check without funds "gets credit for the prejudgment time he served on each of the eight separate offenses." *Id.* at ___, 343 P.3d at 33.

The *Owens* Court held "Idaho Code section 18-309's plain language unambiguously states that a defendant receives credit for time served on each of his offenses, whether to be served concurrently or consecutively." *Id.* at ___, 343 P.3d at 33. The Court overruled *State v. Hoch*, 102 Idaho 351 (1981), which had decided a defendant does not get credit for time served on each of the offenses where the sentences were to be served consecutively, because *Hoch* "incorrectly relied on an assumed legislative intent that conflicts with the statute's plain language." *Id.* at ___, 343 P.3d at 34-35.

The holding in *Owens* relied upon the plain language of Section 18-309: the Court observed the statute's "language plainly gives credit for prejudgment time in custody against each count's sentence. The statute does not limit that credit in any way." *Id.* at ___, 343 P.3d at 33. Section 18-309 "mandates that a court gives a defendant credit for his time served because the statute states that a person 'shall' receive credit." *Id.* at ___, 343 P.3d at 33. The Court also stressed the statute "specifies that a person 'shall receive credit in the judgment for *any* period of incarceration prior to entry of judgment . . . ." *Id.* at ___, 343 P.3d at 33 (emphasis in original). The Court then explained:

> The statute continues to provide that a defendant gets the credit only on a requirement that incarceration was for "the offense or an included offense for which the judgment was entered." The statute has a mandatory directive that specifically conditions credit for time served on the fact that

> the incarceration was for 'the offense' for which the judgment was entered. While the word "offense" is singular, the phrase "if such incarceration was for the offense or an included offense for which the judgment was entered" simply describes the type of incarceration that a defendant gets credit for. This indicates that as long as the defendant's prejudgment jail time was for 'the offense' the defendant was convicted of and sentenced for, the court gives the defendant that credit. If the legislature had delineated credit for incarceration for 'each case' or another description other than 'the offense,' the outcome would be different.

Id. at ___, 343 P.3d at 33.

The *Owens* decision's emphasis on the plain language of Section 18-309 casts doubt on the Court of Appeals' causation test because that test has read additional language into the statute. The Court of Appeals concluded that, because the incarcerations in *Vasquez* and *Horn* were a consequence of unrelated charges, the defendants in those cases did not get credit for time served in the cases on appeal. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51. Although arrest warrants had been served in those cases while the defendants were incarcerated, they had no effect on the defendants' liberty because they were already subject to confinement on the unrelated charges. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51. The Court in *Vasquez* further determined that "[w]hen charges are concurrently *filed*, the prejudgment incarceration is caused by each charge," while "when the charges are . . . brought by different complaints for unrelated charges in separate counties, the incarceration is not a consequence of all charges . . . ." *Vasquez*, 142 Idaho at 69 (emphasis in original). Thus, the Court of Appeals has determined a defendant would get credit for prejudgment time served if the incarceration was *only* for the offense or an included offense for which the judgment was entered.

However, the plain language of Section 18-309 does not contain a restriction that the prejudgment incarceration must be solely and exclusively for the instant offense.

Conversely, as recognized in *Owens*, the statute provides for credit for prejudgment time served on each of several separate offenses. *See Owens*, 158 Idaho at ___, 343 P.3d at 33. Each individual count in *Owens* presumably would have had no effect on the defendant's liberty, considering that if one of the eight counts had been dismissed, the defendant would have been subject to confinement for the other counts. But under the plain language of Section 18-309, the defendant would still receive credit for time served on each of the offenses. *See id.* at ___, 343 P.3d at 33-35. Put otherwise, the plain language of Section 18-309 grants defendants credit for prejudgment time served on each offense, even if the prejudgment time served was a consequence of multiple offenses. The statue does not restrict credit for time served to situations where the incarceration was only for the offense for which the judgment was entered.

Thus, the Court of Appeals' causation test has read language into Section 18-309 that a defendant would get credit for prejudgment time served if the incarceration was *only* for the offense or an included offense for which the judgment was entered. The courts do not have the authority to so revise unambiguous statutory language. *See, e.g.*, *Verska*, 151 Idaho at 893 ("If the statute as written is socially or otherwise unsound, the power to correct it is legislative, not judicial. . . . If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." (internal quotation marks omitted)). The *Owens* Court's emphasis on the plain language of Section 18-309 has therefore cast doubt on the Court of Appeals' causation test.

The *Owens* decision also casts doubt on the Court of Appeals' causation test because the Court explained Section 18-309 ties prejudgment credit to each offense, not each case. The Court of Appeals has not granted credit for time served where the

defendant was already incarcerated on unrelated charges in different cases. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51. But the *Owens* Court highlighted that, under Section 18-309, a district court must provide credit for prejudgment jail time served if it was "for the offense" the defendant was convicted of and sentenced for. *See Owens*, 158 Idaho at ___, 343 P.3d at 33. The Court noted, "[i]f the legislature had delineated credit for incarceration for 'each case' or another description other than 'the offense,' the outcome would be different." *Id.* at ___, 343 P.3d at 33.

The Court of Appeals' causation test in effect delineates credit for incarceration for "each case"; a defendant would not get credit for time served in a case if he were already incarcerated in a different case. *See Vasquez*, 142 Idaho at 68-69; *Horn*, 124 Idaho at 850-51. But in the *Owens* decision, the Idaho Supreme Court indicated that effect would be contrary to the plain language of Section 18-309. *See Owens*, 158 Idaho at ___, 343 P.3d at 33. Thus, *Owens* has cast doubt on the Court of Appeals' causation test.

Under the plain language of Section 18-309, Mr. Martin should have received the credit he requested for all the time served. The defendant in *Owens* received credit for time served on each of his offenses, even though the period of prejudgment incarceration was a consequence of multiple offenses (namely, each of the eight counts). *See Owens*, 158 Idaho at ___, 343 P.3d at 33-35. Similarly, Mr. Martin is entitled to credit for time served following service of the warrants for the offense in the instant case, even though the periods of prejudgment incarceration were a consequence of multiple offenses (namely, the instant offense and the other

case/parole violation). *See* I.C. § 18-309(1). Once the warrants were served on Mr. Martin, he was incarcerated "for the offense" in this case. *See id.*

Mr. Martin is entitled to credit for all the time served from service of the warrants even though he was incarcerated for multiple offenses in multiple cases, unlike the defendant in *Owens* who was incarcerated for multiple offenses in a single case. *Cf. Owens*, 158 Idaho at ___, 343 P.3d at 33-35. Despite the Court of Appeals' determination in *Vasquez*, *see* 142 Idaho at 69, the plain language of Section 18-309 does not distinguish between those two situations. As the *Owens* Court explained, credit for time served is tied to each offense, not delineated for each case. *See Owens*, 158 Idaho at ___, 343 P.3d at 33. Thus, the plain language of Section 18-309 grants Mr. Martin credit for prejudgment time served on each offense, even if the prejudgment time served was a consequence of multiple offenses in multiple cases. *See* I.C. § 18-309(1); *Owens*, 158 Idaho at ___, 343 P.3d at 33-35.

Mr. Martin is entitled to credit for all the time served in this case, a total of 2,204 days. Thus, the district court erred when it denied Mr. Martin's Rule 35 motion to correct the computation of credit for time served.

CONCLUSION

For the above reasons, Mr. Martin respectfully requests this Court reverse the order denying his Rule 35 motion and remand the case for the district court to correct the computation of credit for time served and give Mr. Martin credit for a total of 2,204 days served.

DATED this 7th day of December, 2015.

BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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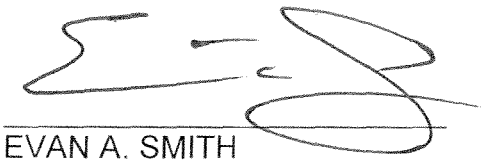

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